



Final Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12VAC30-120
Regulation title	Waiver Services: Home and Community Based Services Mental Retardation Waiver
Action title	MR Day Support Services
Document preparation date	

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This action establishes a new program, the Day Support Waiver for Individuals with Mental Retardation ("Day Support Waiver") to provide day support, prevocational services and supported employment services for individuals who are waiting to receive services under the Mental Retardation Waiver ("MR Waiver").

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Agency Background Document with the attached regulations 12 VAC 30-120-1500 through 12 VAC30-120-1550 and adopt the action, Home and Community Based Services: Regulations to establish a Day Support Waiver for individuals with Mental Retardation, stated therein. I certify that this final regulatory action has completed all the

requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act and is full, true, and correctly dated.

Date

Patrick W. Finnerty, Director
Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services, and § 1915 (c) of the *Social Security Act* provides for home and community based waiver programs such as the Day Support Waiver for Individuals with Mental Retardation.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to establish a new program, the Day Support Waiver for Individuals with Mental Retardation ("Day Support Waiver"), to provide day support, prevocational services and supported employment services for individuals who are waiting to receive services under the Mental Retardation Waiver ("MR Waiver"). In September 2005, there were approximately 2,900 individuals waiting to receive services under the Mental Retardation Waiver ("MR Waiver"). Individuals in the Day Support Waiver program will receive services until they are no longer eligible for Day Support Waiver services. This action will help protect the health and welfare of the citizens of the Commonwealth by providing enhanced services in the community for Medicaid enrollees awaiting services under the Mental Retardation Waiver program.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

New regulations containing the policy and procedures for the Day Support Waiver were developed in consultation with members of the General Assembly and in collaboration with DMHMRSAS and the MR Waiver Advisory Committee. The regulations are contained in six new sections under 12 VAC 30-120, Department of Medical Assistance Services, Waivered Services. The six sections are: 12 VAC 30-120-1500, which contains definitions of Day Support Waiver terms; 12 VAC 30-120-1510, which contains general coverage and requirements for Day Support Waiver services; 12 VAC 30-120-1520, which outlines individual eligibility requirements; 12 VAC 30-120-1530, which defines general requirements for home and community-based participating providers; 12 VAC 30-120-1540, which defines participation standards for home and community-based waiver services participating providers; and 12 VAC 30-120-1550, which further defines the covered services and outlines requirements for providers of these services.

This Waiver covers only those individuals who have a diagnosis of mental retardation. Day support services include training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills, which typically take place outside the home. Day support services shall focus on enabling the individual to attain or maintain his maximum functional level. Prevocational services are those services aimed at preparing an individual for paid or unpaid employment. They do not include activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance, task completion, problem solving and safety. Compensation, if provided, is less than 50% of the minimum wage. DMAS is adding supported employment services to the final regulation, which is a change from the proposed regulation. Supported employment services are provided in work settings where persons without disabilities are employed. It is especially designed for individuals with developmental disabilities, including individuals with mental retardation, who face severe impediments to employment due to the nature and complexity of their disabilities, irrespective of age or vocational potential.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage of these proposed regulations is that the Day Support Waiver provides an alternative for those individuals on the MR Waiver waiting list who could benefit from day support and prevocational services. By providing services to individuals with mental retardation in the community, the waiver is also intended to help delay or prevent institutional placement, thereby improving the health, safety and welfare of citizens of Virginia. There are no known disadvantages of these regulations to the agency, the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

DMAS made changes described below based upon both public comment and the Agency’s desire to align particular services that are similar in other waivers.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-120-1500		Definitions	Added definitions for “Date of Need” and “Supported employment”
12VAC30-120-1510		General coverage and requirements for Day Support Waiver Services.	Added Supported employment to list of covered services. In section D (Slot Allocation), changed slot allocation from a predominately State controlled to a predominately Locality controlled process. Although the State will continue to allocate initial slots to localities, slot vacancies will be filled at the local, rather than the state level.
12VAC30-120-1520		Individual eligibility requirements	In section (A)(2)(a)(1) and (A)(2)(b)(1), changed the basic maintenance needs figure for an individual from 100% of SSI to 165% of SSI.
12VAC30-120-1540(I)		Participation standards for home and community-based waiver services participating providers	Made the various time references into business day references.
12VAC30-120-1550		Services: Day Support and Prevocational Services	Added substantial language describing Supported Employment Services.

Public comment

Please summarize all comment received during the public comment period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.

DMAS' proposed regulations were published in the July 24, 2006 (VR 22:23) *Virginia Register* for their comment period from July 24, 2006 through September 22, 2006. The comments received are set forth below.

The Agency comments from the following: The Arc of Virginia (The Arc), The Dept. of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), Endependence, Cumberland Mountain Community Services Board (Cumberland), The Virginia Association of Community Services Boards (VACSB), which responded on behalf of, and in agreement with, all 40 CSBs in Virginia, The Virginia Board for People with Disabilities (VBPD), and The Virginia Network of Private Providers ("The Network). Where all of the groups who provided comments are indicated, DMAS shall use the reference, "the Commenters." The comments are summarized as follows:

12 VAC 30-120-1500 (Definitions)

All of the Commenters except Cumberland suggested that DMAS add Supported Employment to Section 12 VAC 30-120-1500 (Definitions) and to 12 VAC 30-120-1510 (General coverage and requirements for Day Support Waiver Services), and to other sections as appropriate, because this service option for the Day Support Waiver was specified by the General Assembly in 2006. The Network and the VACSB also recommended that DMAS update the Code of Virginia references in this section to reflect the recodification effective October of 2005.

DMAS Response: DMAS agrees to the addition of Supported Employment as a Day Support Waiver services, in accordance with recent action by the Virginia General Assembly. The definition of the service and appropriate descriptive language will be added to the regulations.

DMAS has updated all Code of Virginia references, as appropriate.

12 VAC 30-120-1510 (General coverage and requirements for Day Support Waiver Services)

Endependence urged DMAS to "[m]aintain current language regarding the allocation of slots," and the VBPD stated that "[t]he person-centered allocation system for Day Support Waiver slots currently used, based on the chronological application date continues to support the Board's vision for availability and access of services statewide." The VBPD also urged DMAS to increase the number of slots available.

All the other Commenters urged DMAS change the manner in which slots are allocated, referring to the current centralized slot allocation process as "cumbersome to the point of being a barrier to access to services" and time consuming, and noting that that the current process makes effective care planning difficult. This group of the Commenters advanced several models upon which DMAS might base the reorganization of the slot allocation process. This point appeared to be the area of most concern for the Commenters.

DMAS Response: DMAS agrees to the suggestion that the slot allocation process be modified to create more timely access to services for recipients. The regulations have been adjusted accordingly.

12 VAC 30-120-1520 (Individual eligibility requirements)

The Network, The Arc and the VACSB urged DMAS to use person-centered language in the MR Day Support regulations.

DMAS Response: The Agency has made many enhancements to the regulations that reflect person-centered planning. DMAS has made as many person-centered references as possible.

12 VAC 30-120-1540 (Participation standards for home and community-based waiver services participating providers)

Both DMHMRSAS and The Network suggested that DMAS change the time frames in this section to be consistent with the wording in the MR Waiver regulations (i.e., change “10 working days” and “10 calendar days” to “10 business days” and change “within 72 hours” to “within 3 working days.” In items #1 and #2 in this same subsection, “12 calendar days” should be “10 business days” to facilitate consistency with the MR Waiver regulations.)

DMAS Response: DMAS agrees that stated time frames must be clear and has made regulation changes to reflect business days in various locations.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

The chart below details all of the previous changes made to the regulatory text.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-120-1500		Definitions	The following change was made in the proposed permanent regulations: <ol style="list-style-type: none"> 1. The definition of Day Support Waiver for Individuals with Mental Retardation was modified to provide additional clarification. 2. The definition of home and community-based waiver services was modified to be consistent with the CMS approved application for the waiver, which specifies that only individuals with mental retardation are covered under this waiver.

12VAC30-120-1510		General coverage and requirements for Day Support Waiver Services.	<p>The following change were made in the proposed permanent regulations:</p> <p>Language regarding the restriction of waiver services to individuals in institutions was moved to this section from 12VAC30-120-1520(C) to be consistent with a change made to the MR Waiver regulations at the recommendation of the Office of the Attorney General.</p>
12VAC30-120-1520		Individual eligibility requirements	<p>The following changes were made in the proposed permanent regulations:</p> <ol style="list-style-type: none"> 1. Language regarding the CSP development process was updated to reflect that CSPs are developed with individuals and their families and that modifications to CSPs must be approved by the individual or family/caregiver. 2. Language regarding the restriction of waiver services to individuals in institutions was moved from this section to 12VAC30-120-1510(B) to be consistent with a change made to the MR Waiver regulations at the recommendation of the Office of the Attorney General. 3. Clarified that monthly visits must take place at the individual's placement for those individuals who reside in DSS-licensed placements.
12VAC30-120-1530		General requirements for home and community-based participating providers	<p>The following change was made in the proposed permanent regulations:</p> <p>Added language to clarify documentation requirements in the provider's attendance log.</p>
12VAC30-120-1550		Services: Day Support and Prevocational Services	<p>The following changes were made in the proposed permanent regulations:</p> <ol style="list-style-type: none"> 1. Added requirement that staff providing services be trained prior to providing direct services to be consistent with the CMS approved application. 2. Added language to provide further clarification of provider requirements for billing during transportation.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment, but may increase disposable family income by providing services often paid for by families. The MR Day Support Waiver will have a positive impact on families. By providing day support services, the waiver will help to maintain family stability and reduce the need for institutional placement.